



Senate

General Assembly

File No. 570

January Session, 2011

Substitute Senate Bill No. 1087

Senate, April 18, 2011

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING WHISTLEBLOWER COMPLAINTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-61dd of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) Any person having knowledge of any matter involving
4 corruption, unethical practices, violation of state laws or regulations,
5 mismanagement, gross waste of funds, abuse of authority or danger to
6 the public safety occurring in any state department or agency or any
7 quasi-public agency, as defined in section 1-120, or any person having
8 knowledge of any matter involving corruption, violation of state or
9 federal laws or regulations, gross waste of funds, abuse of authority or
10 danger to the public safety occurring in any large state contract, may
11 transmit all facts and information in such person's possession
12 concerning such matter to the Auditors of Public Accounts. The

13 Auditors of Public Accounts shall review such matter and report their
14 findings and any recommendations to the Attorney General. Upon
15 receiving such a report, the Attorney General shall make such
16 investigation as the Attorney General deems proper regarding such
17 report and any other information that may be reasonably derived from
18 such report. Prior to conducting an investigation of any information
19 that may be reasonably derived from such report, the Attorney
20 General shall consult with the Auditors of Public Accounts concerning
21 the relationship of such additional information to the report that has
22 been issued pursuant to this subsection. Any such subsequent
23 investigation deemed appropriate by the Attorney General shall only
24 be conducted with the concurrence and assistance of the Auditors of
25 Public Accounts. At the request of the Attorney General or on their
26 own initiative, the auditors shall assist in the investigation.

27 (b) The Auditors of Public Accounts or the Attorney General may
28 reject any complaint received pursuant to subsection (a) of this section
29 if either the Auditors of Public Accounts or the Attorney General
30 determines one or more of the following:

31 (1) There are other available remedies that the complainant can
32 reasonably be expected to pursue;

33 (2) The complaint is better suited for investigation or enforcement
34 by another state agency;

35 (3) The complaint is trivial, frivolous, vexatious or not made in good
36 faith;

37 (4) Other complaints have greater priority in terms of serving the
38 public good;

39 (5) The complaint is not timely or is too long delayed to justify
40 further investigation; or

41 (6) The complaint could be handled more appropriately as part of
42 an ongoing or scheduled regular audit.

43 (c) If at any time the Auditors of Public Accounts or the Attorney
44 General determines that a complaint is more appropriately
45 investigated by another state agency, the Auditors of Public Accounts
46 or the Attorney General shall refer the complaint to such agency. The
47 investigating agency shall provide a status report regarding the
48 referred complaint to the Auditors of Public Accounts or the Attorney
49 General upon request. The Attorney General [shall have power to]
50 may summon witnesses, require the production of any necessary
51 books, papers or other documents and administer oaths to witnesses,
52 where necessary, for the purpose of an investigation pursuant to this
53 section or for the purpose of investigating a suspected violation of
54 subsection (a) of section 17b-301b until such time as the Attorney
55 General files a civil action pursuant to section 17b-301c. Upon the
56 conclusion of the investigation, the Attorney General shall where
57 necessary, report any findings to the Governor, or in matters involving
58 criminal activity, to the Chief State's Attorney. In addition to the
59 exempt records provision of section 1-210, the Auditors of Public
60 Accounts and the Attorney General shall not, after receipt of any
61 information from a person under the provisions of this section or
62 sections 17b-301c to 17b-301g, inclusive, disclose the identity of such
63 person without such person's consent unless the Auditors of Public
64 Accounts or the Attorney General determines that such disclosure is
65 unavoidable, and may withhold records of such investigation, during
66 the pendency of the investigation.

67 [(b)] (d) (1) No state officer or employee, as defined in section 4-141,
68 no quasi-public agency officer or employee, no officer or employee of a
69 large state contractor and no appointing authority shall take or
70 threaten to take any personnel action against any state or quasi-public
71 agency employee or any employee of a large state contractor in
72 retaliation for (A) such employee's or contractor's disclosure of
73 information to [(A)] (i) an employee of the Auditors of Public Accounts
74 or the Attorney General under the provisions of subsection (a) of this
75 section; [(B)] (ii) an employee of the state agency or quasi-public
76 agency where such state officer or employee is employed; [(C)] (iii) an
77 employee of a state agency pursuant to a mandated reporter statute or

78 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
79 large state contractor, an employee of the contracting state agency
80 concerning information involving the large state contract; or (B) such
81 employee's testimony or assistance in any proceeding under this
82 section.

83 [(2) If a state or quasi-public agency employee or an employee of a
84 large state contractor alleges that a personnel action has been
85 threatened or taken in violation of subdivision (1) of this subsection,
86 the employee may notify the Attorney General, who shall investigate
87 pursuant to subsection (a) of this section.]

88 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
89 specific incident giving rise to a claim that a personnel action has been
90 threatened or has occurred in violation of subdivision (1) of this
91 subsection, a state or quasi-public agency employee, an employee of a
92 large state contractor or the employee's attorney may file a complaint
93 against the state agency, quasi-public agency, large state contractor or
94 appointing authority concerning such personnel action with the Chief
95 Human Rights Referee designated under section 46a-57. Such
96 complaint may be amended if an additional incident giving rise to a
97 claim under this subdivision occurs subsequent to the filing of the
98 original complaint. The Chief Human Rights Referee shall assign the
99 complaint to a human rights referee appointed under section 46a-57,
100 who shall conduct a hearing and issue a decision concerning whether
101 the officer or employee taking or threatening to take the personnel
102 action violated any provision of this section. [If] The human rights
103 referee may order a state agency or quasi-public agency to produce (i)
104 an employee of such agency or quasi-public agency to testify as a
105 witness in any proceeding under this subdivision, or (ii) books, papers
106 or other documents relevant to the complaint, without issuing a
107 subpoena. If such agency or quasi-public agency fails to produce such
108 witness, books, papers or documents, not later than thirty days after
109 such order, the human rights referee may consider such failure as
110 supporting evidence for the complainant. If, after the hearing, the
111 human rights referee finds [such] a violation, the referee may award

112 the aggrieved employee reinstatement to the employee's former
113 position, back pay and reestablishment of any employee benefits for
114 which the employee would otherwise have been eligible if such
115 violation had not occurred, reasonable attorneys' fees, and any other
116 damages. For the purposes of this subsection, such human rights
117 referee shall act as an independent hearing officer. The decision of a
118 human rights referee under this subsection may be appealed by any
119 person who was a party at such hearing, in accordance with the
120 provisions of section 4-183.

121 (B) The Chief Human Rights Referee shall adopt regulations, in
122 accordance with the provisions of chapter 54, establishing the
123 procedure for filing complaints and noticing and conducting hearings
124 under subparagraph (A) of this subdivision.

125 ~~[(4)]~~ (3) As an alternative to the provisions of [subdivisions (2) and
126 (3)] subdivision (2) of this subsection, any state or quasi-public agency
127 employee or large state contractor employee may, in the case of: (A) A
128 state or quasi-public agency employee who alleges that a personnel
129 action has been threatened or taken, [may] file an appeal not later than
130 [thirty] ninety days after learning of the specific incident giving rise to
131 such claim with the Employees' Review Board under section 5-202, or,
132 in the case of a state or quasi-public agency employee covered by a
133 collective bargaining contract, in accordance with the procedure
134 provided by such contract; or (B) an employee of a large state
135 contractor alleging that such action has been threatened or taken,
136 [may,] after exhausting all available administrative remedies, bring a
137 civil action in accordance with the provisions of subsection (c) of
138 section 31-51m.

139 ~~[(5)]~~ (4) In any proceeding under subdivision (2) [~~] or (3)~~ [or (4)] of
140 this subsection concerning a personnel action taken or threatened
141 against any state or quasi-public agency employee or any employee of
142 a large state contractor, which personnel action occurs not later than
143 [one year] two years after the employee first transmits facts and
144 information concerning a matter under subsection (a) of this section or

145 discloses information under subdivision (1) of this subsection to the
146 Auditors of Public Accounts, [or] the Attorney General or an employee
147 of a state agency or quasi-public agency, as applicable, there shall be a
148 rebuttable presumption that the personnel action is in retaliation for
149 the action taken by the employee under subsection (a) of this section or
150 subdivision (1) of this subsection.

151 [(6)] (5) If a state officer or employee, as defined in section 4-141, a
152 quasi-public agency officer or employee, an officer or employee of a
153 large state contractor or an appointing authority takes or threatens to
154 take any action to impede, fail to renew or cancel a contract between a
155 state agency and a large state contractor, or between a large state
156 contractor and its subcontractor, in retaliation for the disclosure of
157 information pursuant to subsection (a) of this section or subdivision (1)
158 of this subsection to any agency listed in subdivision (1) of this
159 subsection, such affected agency, contractor or subcontractor may, not
160 later than ninety days after learning of such action, threat or failure to
161 renew, bring a civil action in the superior court for the judicial district
162 of Hartford to recover damages, attorney's fees and costs.

163 [(c)] (e) Any employee of a state or quasi-public agency or large
164 state contractor, who is found by the Auditors of Public Accounts, the
165 Attorney General, a human rights referee or the Employees' Review
166 Board to have knowingly and maliciously made false charges under
167 subsection (a) of this section, shall be subject to disciplinary action by
168 such employee's appointing authority up to and including dismissal.
169 In the case of a state or quasi-public agency employee, such action
170 shall be subject to appeal to the Employees' Review Board in
171 accordance with section 5-202, or in the case of state or quasi-public
172 agency employees included in collective bargaining contracts, the
173 procedure provided by such contracts.

174 [(d)] (f) On or before September first, annually, the Auditors of
175 Public Accounts shall submit, in accordance with the provisions of
176 section 11-4a, to the clerk of each house of the General Assembly a
177 report indicating the number of matters for which facts and

178 information were transmitted to the auditors pursuant to this section
179 during the preceding state fiscal year and the disposition of each such
180 matter.

181 ~~[(e)]~~ (g) Each contract between a state or quasi-public agency and a
182 large state contractor shall provide that, if an officer, employee or
183 appointing authority of a large state contractor takes or threatens to
184 take any personnel action against any employee of the contractor in
185 retaliation for such employee's disclosure of information to any
186 employee of the contracting state or quasi-public agency or the
187 Auditors of Public Accounts or the Attorney General under the
188 provisions of subsection (a) or subdivision (1) of subsection (d) of this
189 section, the contractor shall be liable for a civil penalty of not more
190 than five thousand dollars for each offense, up to a maximum of
191 twenty per cent of the value of the contract. Each violation shall be a
192 separate and distinct offense and in the case of a continuing violation
193 each calendar day's continuance of the violation shall be deemed to be
194 a separate and distinct offense. The executive head of the state or
195 quasi-public agency may request the Attorney General to bring a civil
196 action in the superior court for the judicial district of Hartford to seek
197 imposition and recovery of such civil penalty.

198 ~~[(f)]~~ (h) Each state agency or quasi-public agency shall post a notice
199 of the provisions of this section relating to state employees and quasi-
200 public agency employees in a conspicuous place that is readily
201 available for viewing by employees of such agency or quasi-public
202 agency. Each large state contractor shall post a notice of the provisions
203 of this section relating to large state contractors in a conspicuous place
204 which is readily available for viewing by the employees of the
205 contractor.

206 ~~[(g)]~~ (i) No person who, in good faith, discloses information [to the
207 Auditors of Public Accounts or the Attorney General] in accordance
208 with the provisions of this section shall be liable for any civil damages
209 resulting from such good faith disclosure.

210 ~~[(h)]~~ (j) As used in this section:

211 (1) "Large state contract" means a contract between an entity and a
 212 state or quasi-public agency, having a value of five million dollars or
 213 more; and

214 (2) "Large state contractor" means an entity that has entered into a
 215 large state contract with a state or quasi-public agency.

216 Sec. 2. (*Effective from passage*) On or before February 1, 2012, the
 217 Attorney General and the Auditors of Public Accounts shall submit a
 218 joint report to the Legislative Program Review and Investigations
 219 Committee, in accordance with the provisions of section 11-4a of the
 220 general statutes, concerning the status of modifications made to the
 221 Attorney General's and Auditors' implementation of section 4-61dd of
 222 the general statutes, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	4-61dd
Sec. 2	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In section 1(g) an incorrect internal reference was changed for accuracy.

PRI *Joint Favorable Subst. C/R*

GAE

GAE *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill (1) permits the Auditors of Public Accounts (APA) to reject a whistleblower complaint or refer it to another entity and (2) requires them to submit a joint report to the legislature on how they have modified the whistleblower process. This could result in staff hour savings approximate to one full-time employee (the average salary of an auditor is approximately \$84,000, not including fringe benefits). However, it is anticipated that APA would shift staff resources from performing approximately 126 whistleblower complaint cases per year to other duties, such as state agency performance audits and compliance audits of eight quasi-public entities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 1087*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING WHISTLEBLOWER COMPLAINTS.*****SUMMARY:**

This bill restructures the process for investigating whistleblower complaints, expands current protections for whistleblowers, and establishes new ones. It (1) allows both the Auditors of Public Accounts and the attorney general to reject a complaint or refer it to another entity and (2) requires them to submit a joint report to the legislature on how they have modified the process.

Regarding whistleblower protection, the bill (1) extends, from one to two years after reporting misconduct, the period during which there is a rebuttable presumption that negative personnel actions against whistleblowers are retaliatory; (2) extends, from 30 to 90 days, the time whistleblowers have to file complaints of retaliation; and (3) expands the rebuttable presumption to protect individuals retaliated against for making internal disclosures, such as a disclosure to a supervisor.

The bill eliminates the requirement that the attorney general investigate retaliation complaints but maintains the complainants' right to a hearing before the Commission on Human Rights and Opportunities (CHRO). During the course of a CHRO proceeding, the bill allows (1) whistleblowers to amend their complaints in light of subsequent retaliatory incidents and (2) hearing officers to order state agencies and quasi-public agencies to produce witnesses and evidence without issuing a subpoena.

The bill extends the whistleblower protection from retaliation to employees who testify or provide assistance in any proceeding

concerning a whistleblower complaint. It also protects individuals from civil liability for all good faith disclosures and maintains penalties for false charges made knowingly and maliciously.

Lastly, the bill extends to each state agency and quasi-public agency a requirement to post notice of whistleblower protections in a conspicuous place that is readily viewable by employees. This requirement currently applies to large state contractors.

EFFECTIVE DATE: October 1, 2011, except the joint report requirement, which is effective upon passage.

INVESTIGATION OF WHISTLEBLOWER COMPLAINTS

Under current law, the auditors conduct an initial review of all whistleblower complaints and report any findings or recommendations to the attorney general, who may investigate further with the concurrence and assistance of the auditors. Neither the auditors nor the attorney general has the authority to reject a complaint. The bill allows either to do so if:

1. a complainant has other available remedies that he or she could reasonably be expected to pursue;
2. the complaint is trivial, frivolous, vexatious, or made in bad faith;
3. other complaints have greater priority in terms of serving the public good;
4. the complaint is not timely or has been delayed too long;
5. the complaint could be more appropriately handled in an ongoing or scheduled regular audit; or
6. another agency is better suited to investigate or enforce the complaint.

If either the auditors or the attorney general determines that another

state agency is better suited to investigate the complaint, the bill allows the complaint to be referred to that agency. That agency must, upon the request of the auditors or attorney general, provide a status update of the referred complaint.

The bill requires the auditors and attorney general to submit a joint report, by February 1, 2012, to the Legislative Program Review and Investigations Committee concerning any modifications made to their handling of whistleblower complaints.

REPORTING RETALIATORY ACTIONS

Rebuttable Presumption and Deadline for Filing Complaints

Under current law, state officers, employees, and appointing authorities; officers and employees of quasi-public agencies; and large state contractors may not take or threaten to take any personnel action in retaliation for a whistleblower disclosure. Any negative personnel action that occurs within one year after the initial report to the auditors of public accounts or the attorney general is presumed to be retaliatory. The presumption is rebuttable (i.e., an assumption that stands as fact unless contested and proven otherwise). An employee who believes he or she has been retaliated against currently has 30 days to file a complaint with the chief human rights referee at CHRO. Alternatively and within the same period of time, a state or quasi-public agency employee can file an appeal to the Employees' Review Board. A large state contractor's employee can bring a civil action after exhausting all administrative remedies.

The bill (1) extends, from one to two years, the period during which there is a rebuttable presumption that any such action is retaliatory; and (2) extends, from 30 to 90 days, the amount of time a whistleblower who believes he or she is a victim of retaliation has to file a complaint with CHRO. It makes the same change for state or quasi-public agency employees who opt to file an appeal with the Employees' Review Board.

Attorney General

The bill eliminates the ability of a whistleblower to file a retaliation complaint with the attorney general. Under current law, a whistleblower may file a retaliation complaint with the attorney general, who then investigates the complaint and reports any findings, but may not provide any relief (i.e., reinstatement or back pay) to a complainant. The bill eliminates this provision.

Amended Claims

Under the bill, whistleblowers may amend complaints they have already filed with CHRO if an additional retaliatory incident occurs. Under current law, these complaints may include only the original retaliatory incident.

Hearing Process

By law, CHRO may issue subpoenas compelling the appearance of witnesses and production of evidence relevant to a proceeding. The bill allows hearing officers to, without issuing a subpoena, order state agencies and quasi-public agencies to produce for a proceeding (1) an employee to testify as a witness and (2) books, papers, or other documents relevant to the complaint. It allows hearing officers to consider the failure to produce a witness, books, papers, or documents as supporting evidence for the complainant.

The bill prohibits agencies and contractors from retaliating against an employee who testifies in or provides assistance to (1) a CHRO hearing, (2) an Employees' Review Board hearing, or (3) a civil action concerning a whistleblower complaint.

INTERNAL DISCLOSURES

Disclosures to State Agencies

The bill expands the rebuttable presumption to include retaliatory personnel actions for internal disclosures, or disclosures of information to (1) an employee of the state or quasi-public agency where the individual is employed; (2) an employee of a state contracting agency, in the case of a large state contractor; (3) a state agency employee pursuant to a mandated reporter statute (see BACKGROUND); or (4)

testimony or assistance in a whistleblower hearing or civil action.

Contracts

The bill makes a similar change concerning actions or threats to impede, cancel, or fail to renew contracts. Under current law, an agency, contractor, or subcontractor can bring a civil action in Hartford Superior Court if an officer or employee in a state or quasi-public agency or large state contractor, whichever is applicable, takes or threatens to take an action to impede, cancel, or fail to renew a contract in retaliation for the report to the auditors of public accounts or the attorney general. The bill expands this protection to include (1) retaliation for internal disclosures from one employee to another within an agency or (2) any testimony or assistance with a proceeding.

The bill also requires contracts between state or quasi-public agencies and large state contractors to protect employees' testimony and assistance, rather than only their initial reports to the auditors of public accounts or the attorney general. As under current law, anyone who takes or threatens to take retaliatory action against an employee who makes an internal disclosure may be subject to a civil penalty of up to \$5,000 for each offense, up to a maximum of 20% of the contract's value. Each violation, and each calendar day that it continues, is a separate offense.

DISCLOSURES

Good Faith

The bill protects whistleblowers from civil liability for all good faith disclosures, not only those made in their report to the auditors of public accounts or the attorney general.

False Charges

By law, whistleblowers who knowingly and maliciously make false charges are subject to disciplinary action up to and including dismissal by their employer. The bill specifies that a finding of false charges may be made by the auditors, the attorney general, a human rights referee, or the Employees' Review Board.

BACKGROUND***Whistleblower Complaints***

By law, actions by a state agency, quasi-public agency, or large state contractor that may trigger a whistleblower complaint include (1) corruption, (2) unethical practices, (3) violation of state or federal laws or regulations, (4) mismanagement, (5) gross waste of funds, (6) abuse of authority, or (7) danger to the public safety.

Mandated Reporter Statute

Connecticut law requires people in professions or occupations that have contact with children or whose primary focus is children to report suspected child abuse or neglect. They must make a report when, in the ordinary course of their employment or profession, they have reasonable cause to suspect that a child under age 18 has been abused, neglected, or placed in imminent risk of serious harm. Among others, mandated reporters include, battered women's and sexual assault counselors; Department of Children and Families employees; police, probation, and parole officers; and school guidance counselors, paraprofessionals, principals, and teachers.

COMMITTEE ACTION

Program Review and Investigations Committee

Joint Favorable Substitute Change of Reference
Yea 12 Nay 0 (03/11/2011)

Government Administration and Elections Committee

Joint Favorable
Yea 14 Nay 0 (03/30/2011)